STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES
AND REGULATORY AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

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Mr. Chairman, and Members of this Committee, I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. Thank you for inviting me to this hearing and for giving me the opportunity to testify today on the immense challenge of modernizing and streamlining the sea of existing federal regulations. Before discussing the modest progress we have made, I would like to remind everyone of the magnitude of the challenge we face.

To the best of our knowledge, no one has ever tabulated the sheer number of federal regulations that have been adopted since passage of the Administrative Procedure Act, or since some earlier historical benchmark. Since OMB began to keep records in 1981, there have been 109,710 final rules published in the Federal Register by federal agencies. Of these published rules, 20,029 were formally reviewed by OMB prior to publication. Of the OMB-reviewed rules, 1,073 were considered "major" or "economically significant" rules, primarily because they were estimated to have an economic impact greater than $100 million in any one year.

Sad as it is to say, most of these existing federal rules have never been evaluated to determine whether they have worked as intended and what their actual benefits and costs have been. During President Bush's first term, OMB initiated a very modest program to take a second look at a limited number of these existing regulations. These re-evaluations are based on the principles of public participation, agency evaluation, and OMB review of agency actions.

In 2001 OMB requested public nominations of rules that should be rescinded or modified, with an emphasis on rules that were obsolete or outmoded. We received 71 nominations from 33 commentators involving 17 federal agencies. OIRA staff evaluated these nominations and determined that 23 of the nominations should be treated as "high priority" review candidates by federal agencies. Today I am pleased to report that federal agencies have taken at least some action (e.g., a proposed or final rule) on 17 (or nearly 75%) of these reform nominations. These actions include FDA's final rule requiring that *trans*-fat be added to the Nutrition Facts Panel, and DOL's final rule modernizing the overtime provisions of the Fair Labor Standards Act. In most cases, these actions have been summarized in Appendix C of our 2003 final Report to Congress, which provides an item-by-item summary of the status of each reform nomination. Subsequent to the publication of that report, several of the rulemakings nominated for reform have been the subject of judicial actions. In one case (DOE's revised standards for air conditioners) our action has been overturned by a federal court. In another case (EPA's safe harbor for routine maintenance under the New Source Review program), our action has been

stayed by a federal court pending review of the rulemaking on the merits. And in yet another case, our action (DOT's modernized hours-of-service rule for truckers) was overturned by a federal court but then reinstated by Congressional action. Overall, OMB regards the 2001 solicitation as a successful endeavor.

In 2002 OMB again requested public nominations of rules that should be rescinded or modified. We also sought nominations of rules that needed to be extended or expanded and, in an important innovation, included guidance documents and paperwork requirements as well as rules within the scope of the solicitation. After an extensive outreach effort to the public, we received a larger response in 2002 than in 2001, much larger in fact than we expected. We received 316 distinct reform nominations from more than 1,700 commenters. After an intensive OMB staff review of these nominations, including consultation with agencies, we determined that 109 of the nominations were already under consideration at agencies. Another 51 were referred to independent agencies. The remaining 156 nominations were referred to agencies for their consideration. In 2002 OMB did not attempt to define "high priority" reforms for two reasons: (1) the large volume of nominations exceeded the capabilities of OIRA staff to evaluate them and (2) the agencies, we felt, might take greater ownership of reforms if they determined which were to be treated as a priority. Chapter 2 of the 2003 final Report to Congress provides more information about this process.

We have not yet finished a precise accounting of how many of the 156 reform nominations have resulted in some agency action (e.g., a proposed and/or final rule). However, our preliminary estimate -- based on information in our 2003 Report to Congress and some limited follow-up with agencies -- is that approximately 55 (about 35%) of these nominations have resulted in agency action.

We did not request nominations in 2003 because that was the year that we revamped OIRA's regulatory-analysis guidelines. The result was the publication of OMB Circular A-4, which now governs agency preparation of economically significant proposed rulemakings, and will be in force starting in January 1, 2005 for economically significant final rulemakings. Although it is too early to draw conclusions on how A-4 has impacted agency rulemakings, the preliminary judgment of OMB's professional staff is that it has improved the analysis of proposed rules.

In February 2004 we again solicited reform nominations, but with a clear focus on the manufacturing sector of the U.S. economy. The manufacturing sector faces a relatively large regulatory burden when compared to other sectors of the economy, and thus the need to streamline burden on the manufacturing sector is essential. As with the 2002 nominations, we requested nominations of guidance documents and paperwork requirements as well as regulations. We also offered additional guidance to commenters on how to suggest reforms. We asked that commenters try and make a benefit-cost case for the reform, as many of the rules that are potential reform candidates undoubtedly generate substantial benefits. We also recommended that commenters focus on reforms that agencies can move forward on without statutory change. Our experience with previous years taught us that these are the types of reform suggestions that are likely to lead to agency actions. In response to this solicitation, we have received 189 distinct reform nominations from 41 commentators. We are in the process of

evaluating these 189 nominations and intend to publish a plan for agency evaluation of these suggestions later this year.

Looking back at our experience over the last four years, we offer the following observations for the Subcommittee's consideration. First, when OMB designates a reform nomination as a "high priority candidate" for agency consideration, the result may be a higher likelihood of agency action. Second, full funding of the President's request for OMB would enable us to continue to make progress on regulatory reform. Third, bureaucratic incentives make it difficult for agencies to engage in the review of existing rules when they are focused on meeting obligations for new rules, often under statutory or court deadlines. Finally, the total number of reform nominations from the public should not be misinterpreted as the total number of meritorious reforms. Not all suggestions from the public are well grounded in scientific, economic and legal analysis.

Thank you very much for the opportunity to participate today in this very important hearing.

Table 1: Status of Reform Nominations

Year	# of Nominations considered for Agency Actions*	# of Agency Actions
2001	23	17
2002	156	55
2004	189	NA
*In 2001, this column is the number of actions designated as high priority by OMB. In 2002, this column is the number of nominations referred to agencies for their consideration.		